

REMARKS

The Official Action of 9 March 2006 has been carefully considered and reconsideration of the application as amended is respectfully requested.

The courtesy of Examiner Nina Bhat in discussing this application with the undersigned in a telephone interview on 29 June 2006 is acknowledged with appreciation. The Interview Summary which issued from the interview accurately describes what transpired, as amplified below.

The claims have been amended to make changes of a formal nature, including the correction of clerical errors, without narrowing the scope of the claims.

In the interview, Applicants called the Examiner's attention to the requirements in *re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994), as interpreted in the Manual of Patent Examining Procedure, for examining means plus function recitations. These requirements include the requirement that the Examiner show that the prior art **structure** is the same as or equivalent to the **structure** described in the specification which is identified as corresponding to the claimed means (see MPEP Section 2182). Applicants pointed out that, in the example of a sailboat in paragraph 3 of the Official Action, the rain or waves that may wet the sail of a sailboat do not have **structure** equivalent to the structure described in the specification for the claimed wetting

means.

With respect to the 112, first paragraph rejections in paragraph 4 of the Official Action, Applicants pointed out that the only structural relationships which arguably might be considered from the specification to be essential are already recited in the claims (see, e.g., subparagraph (d) of claim 1, which recites the relationship between the wetting means and the evaporation surface means and between the support means and the other means, and subparagraph (c) of claim 1, which recites the relationship between the orientation means and the evaporation surface means). As noted in the Interview Summary, after discussion with her supervisory patent examiner, the Examiner courteously agreed to withdraw the 112 rejections.

In connection with the prior art rejections in paragraphs 6 and 7 of the Office Action, Applicants respectfully note that 35 U.S.C. Sections 102(b) and 102(e) require that a person shall be entitled to a patent unless the invention, *inter alia*, was described in an appropriate prior application. MPEP § 2131 establishes that a claim is anticipated by a reference under this section “only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”.

With specific reference to the prior art rejection at paragraph 6, Applicants respectfully note that Takayasu teaches neither an evaporation element which is “free of any external enclosure”, an orientation means as recited in Claim 1, nor a

support means “with the wetting means disposed for wetting the evaporation surface means of the at least one evaporation element.” Applicants respectfully also note that paragraph 6 does not even purport to explain a correspondence between these elements recited in the claims and those allegedly disclosed in Takayasu.

Applicants respectfully submit that, in the absence of any description of the claimed elements in the reference and/or any explanation as to why the prior art elements are equivalent to the claimed means, the rejection in paragraph 7 is insufficient to set forth even a *prima facie* case of alleged anticipation or obviousness. See MP EP 2183 (“If the examiner finds that a prior art element (A) performs the function specified in the claim, (B) is not excluded by any explicit definition provided in the specification for an equivalent, and (C) is an equivalent of the means- (or step-) plus-function limitation, the examiner should provide an explanation and rationale in the Office action as to why the prior art element is an equivalent.”) Moreover, as noted above, it is not sufficient for a prior art element to perform the identical function specified in the claimed means; the Examiner carries the initial burden of proof for showing that the prior art **structure** is the same as or equivalent to the structure described in the specification (see MPEP 2182 and 2183).

With specific reference to the prior art rejection at paragraph 7, Applicants respectfully note that the evaporation accelerator of Kemper does not include an orientation means as defined in the claims, which orientation means are required to orient the evaporation surface means in a direction at least

approximately parallel to the wind. Indeed, since Kemper describes a rotating device, Kemper would appear to teach away from this recitation.

Moreover, as the evaporation surface means of the present claims is adapted to be wetted, it is respectfully not reasonable to posit that this is thus “expressly or inherently described” by Kemper. As the wetting means as defined in the claims are directed toward wetting the evaporation surface means, the lack of the evaporation surface means precludes the inclusion in Kemper of a wetting means as well.

Furthermore, Applicants respectfully disagree with the Examiner’s apparent assertion that the water droplet which is produced by the evaporation accelerator of Kemper anticipates a wettable evaporation surface. Although both achieve the same result, that of increased surface area of the liquid to be evaporated, the evaporation surface is a structural element which is part of an evaporation device, while a water droplet is a product of the evaporation accelerator of Kemper. In the absence of any structural equivalence, the water droplets could not be considered to be an equivalent of the claimed means (see MPEP 2183).

Even assuming for the sake of argument that the water droplets could be considered to constitute a wettable evaporation surface, Kemper further

lacks disclosure of a support means for supporting these droplets. Therefore, Kemper does not teach a supporting means as defined in the claims.

In connection with the prior art cited at paragraph 9 of the Office Action, the Examiner states that regarding “the wind directing means, moving means so that the evaporating means are oriented perpendicular to the surface . . . are specific and well known parameter [sic.] necessary for providing a floatable evaporation device.” Applicants respectfully wish to point out that the Examiner has provided no support for this contention. Moreover, these elements are not recited in the claims presently on file.

In particular, Applicants respectfully draw the Examiner’s attention to the fact that Lapeyre does not relate to an evaporation device at all, rather to a distillation system which draws its power from ocean waves. The specific considerations recited by the Examiner as being obvious design choice parameters as taught by Lapeyre, namely “weather conditions, wind conditions, and other types of orientation,” are not related to increasing the rate of evaporation. Rather, they are connected with harnessing the energy of ocean waves to generate power, specifically for driving a distillation process.

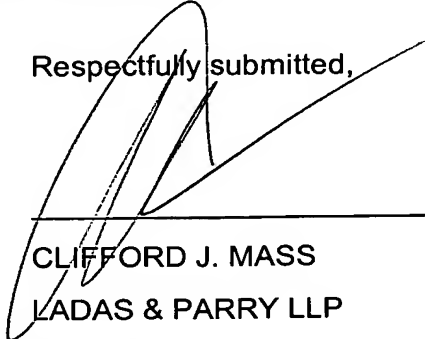
Furthermore, Applicants respectfully note that MPEP § 2144.03 requires that:

It would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known [emphasis original]

As such, it is respectfully not appropriate for the examiner to suggest that “the corrugated evaporating [sic.] surface . . . [is] an obvious expedient” without providing a prior art reference to that effect. Applicants respectfully call upon the Examiner to do so or to withdraw the rejection.

In view of the above, Applicants respectfully submit that the cited art does not set forth even a *prima facie* case of anticipation or obviousness for the invention as defined by any of the claims. Accordingly, it is respectfully believed that all rejections and objections of record have been successfully traversed and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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